Supreme Court, U.S.
FILED
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(1)

No. 03-942

In The

Supreme Court of the United States

BETTY C. DAHLQUIST, Pro Se,

Petitioner,

v.

PATRICK G. VUKICH,

Respondent.

On Petition For A Writ Of Certiorari To The Washington State Supreme Court

PETITION FOR A WRIT OF CERTIORARI

BETTY C. DAHLQUIST
Pro-Se, Petitioner
15238 SE 272 Street
Kent, WA 98042
253-631-2906

QUESTIONS PRESENTED

Whether the rulings of the Washington Courts that there was no contract between Patrick Vukich and the Estate of Fred and Cecil Martel of whom Betty Dahlquist is the successor is in effect an impairment of the obligation of contracts?

Whether the rulings by the Superior Court granting partial summary judgment on liability and the rulings of the Washington Court of Appeals affirming the grant of summary judgment and the Washington Supreme Court denying review is a denial of equal protection of the law Fourteenth Amend. U.S. Const., by denying Dahlquist the right to amend her complaint, join other parties with an interest in the property with some additional claims and defenses, and the right to discovery and to present evidence of a contract within the chain of title in violation of Dahlquist's right of the "freedom of contract?" Article 1, § 10 of the United States Constitution.

Whether a law (these rulings) impairs the obligation of a contract created under RCW 4.16.040 or RCW 4.16.020?

Whether by denying Dahlquist the opportunity to discover evidence changing its terms, its legal qualities and conditions, or by regulating the remedy for its enforcement the Washington Courts have engaged in an action to "impair the obligation of a contract," within prohibition of Article 1, § 10, of the United States Constitution, that is to weaken it, lessen its value in any respect or in any degree?

QUESTIONS PRESENTED – Continued

Whether these rulings by the Washington Courts changed the intention and legal effect of the parties, giving to one (Mr. Vukich) a greater and to the other (Betty Dahlquist, Fred Martel and Cecile Martel) a lesser interest or benefit, or which imposes conditions not included in the contract or dispenses with the performance of those included and thereby impairs the obligation of the contract thus creating, a justiciable controversy, Article III, § 2 of the United States Constitution?

PARTIES TO THE PROCEEDINGS

Petitioner is Betty C. Dahlquist, Pro-Se.

Respondent is Patrick G. Vukich.

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PETITION FOR A WRIT OF CERTIORARI

Ms. Betty Dahlquist-pro se, respectfully petitions for a writ of certiorari to review the judgment of the Washington State Supreme Court in this case.

OPINIONS BELOW

The opinion of the Washington Supreme Court (App. A, infra, 1a) is reported at 77 P.3d 651 (Table), 150 Wash.2d 1002. The opinion of the Washington Court of Appeals (App., infra, 2a-3a) is an unpublished opinion reported at 114 Wash.App. 1064. The order of the Washington Superior Court granting respondents' motion for summary judgment (App., infra, 4a-6a) is unreported.

JURISDICTION

The judgment of the Washington State Supreme Court was entered on September 30, 2003. (App., infra, 1a). The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 10 of the United States Constitution provides in relevant part that "No State shall . . . make

. . . or Law impairing the Obligation of Contracts, . . .

. . . freedom of contract a basic right reserved to the people by the constitution . . . "

Article III, section 2 of the United States Constitution provides in relevant part that "The judicial power shall extend to all cases, in Law and Equity . . . to controversies . . . between citizens."

Fourteenth Amendment of the United States Constitution provides in relevant part that "no persons shall be denied equal protections of the law."

Revised Code of Washington 4.16.020 actions limited to ten years.

Revised Code of Washington 4.16.040 actions limited to six years.

STATEMENT

This case involves Respondent Vukich (plaintiff in the original action) who brought this action as a Complaint to Quiet Title and for Slander of Title and Contempt of Court.

Petitioner Dahlquist answered on May 5, 2000, seeking equitable relief "Equity acts in personam."

Both parties engaged in and made a first set of interrogatories on May 31, 2000, both answered on June 30, 2000. Dahlquist propounded a second set of interrogatories on July 7, 2000 that were resent on August 23, 2000, to which no reply was received by Dahlquist. At the status conference the Plaintiff's attorney indicated that he would provide answers by January 31, 2001. No answers were received and Dahlquist filed a motion to compel proper answers and to answer interrogatories, set for February 23, 2001. Vukich responded on February 21, 2001 and Dahlquist replied February 22, 2001 in part to

reschedule for oral argument. The motion was denied. Dahlquist made a request to have the court reschedule the motion hearing again with oral argument dated May 5, 2001, filed a motion again set for June 12, 2001 without oral argument requesting in part to reschedule for oral argument dated June 1, 2001, the plaintiff responded June 7, 2001 and said motion to reschedule for oral argument again was denied.

Dahlquist's Interrogatories and Requests for Production were not responded to and the Motion to Compel Discovery was not granted.

Defendant's son Daryl Dahlquist made a motion to intervene; which was denied. Dahlquist made a motion to amend her answer and to join other parties with an interest in the property CR 19(a) 20 and 21 with some additional claims and defenses and to add cross-claim defendants, which was denied.

A motion for partial summary judgment was made by Vukich and granted on liability, limiting the trial to damages. Dahlquist Respondent, Plaintiffs motion was granted on August 31, 2001 Dahlquist put in her motion for reconsideration dated September 7, 2001 it was denied and Dahlquist filed a notice of appeal.

Trial to the Court, Judge Lum, was conducted on December 17, 2001, and resulted in a judgment in favor of the Plaintiff in the amount of $64,000.

The Washington Court of Appeals held that previous adjudication already determined that Dahlquist's son Daryl had no interest or claim to the Vukich property and further found that nothing had changed so as to give him an interest in the property.

The Washington Court of Appeals held that the trial court properly denied the request for intervention as a matter of right.

The Washington Court of Appeals further held that the interrogatories [propounded by Dahlquist] were irrelevant because they sought information regarding previously concluded litigation and that the trial court correctly denied the motion to compel.

Dahlquist filed a motion to amend her twenty day response set for May 30, 2001 to add all necessary parties CR 19(a) 20 and 21 with some additional claims and defenses Plaintiff responded on May 25, 2001 Dahlquist put in her final response May 29, 2001 the motion was denied and was never addressed.

The Washington Supreme Court denied review.

REASONS FOR GRANTING THE PETITION

The Washington Court of Appeals held that previous adjudication already determined that Dahlquist's son Daryl had no interest or claim to the Vukich property and further found that nothing had changed so as to give him an interest in the property. The trial court properly denied the request for intervention as a matter of right.

Dahlquist v. Vukich, 2002 WL 31813998, 2 (Wash.App. Div. 1, 2002)

The Washington Court of Appeals further held that the interrogatories [propounded by Dahlquist] were irrelevant because they sought information regarding

previously concluded litigation and that the trial court correctly denied the motion to compel.

Dahlquist v. Vukich, 2002 WL 31813998, 3 (Wash.App. Div. 1, 2002)

The interrogatories propounded by Dahlquist were designed to elicit information on the creation of the contract by the course of correspondence between Fred Martel (predecessor in interest to Dahlquist) with reference to the six year statute of limitations or in the alternative to prove the adverse nature of the possession of the property and the duration of the possession by Martel and Dahlquist in regards to the ten year statute of limitations and information about the ("two dismissal rule"), the 5-19-97 Gas Line Incident, Fred and Cecile Martel's title insurance and community property agreement, Vukich Real Estate Contract and his own contributory negligence for breaching all these contracts.

A. Article I, Section 10 provides that no State may change the terms under which a contract is created or the rules under which it is enforced.

Since the amendment of the judiciary act of 1789 [FN4] by the act of February 5, 1867 [FN5] it has always been held this Court may examine the opinion of the state court to ascertain whether a federal question was raised and decided, and whether the court rested its judgment on an adequate nonfederal ground.

State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 98-99, 58 S.Ct. 443, 445 (U.S. 1938)

B. Review is also warranted because the Washington Supreme Court erred in failing to analyze this case in light of the Contracts Clause of the United States Constitution.

> As with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In applying this standard, however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.

U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 25-26, 97 S.Ct. 1505, 1519 (U.S.N.J. 1977)

Although the constitutional prohibition of the impairment of contracts, U.S. Const., Art. 1, § 10, applies only to the States, we have held that '(v)alid contracts are property, whether the obligor be a private individual, a municipality, a State of the United States.

Thorpe v. Housing Authority of City of Durham, 393 U.S. 268, 279, 89 S.Ct. 518, 524 (U.S.N.C. 1969)

C. The Washington Court of Appeals and Washington Supreme Court refused to look at the manner in which the Superior Court addressed the response to summary judgment the discovery requests as well as the motion to add parties etc., by Dahlquist, and by failing to address Dahlquist's requests denied her the equal protection of Washington State law, Fourteenth Amendment.

> The Andres contend that they raised issues of material fact relevant to the elements of adverse possession that should have precluded

> summary judgment. We review a summary judgment de novo, engaging in the same inquiry as the trial court. Wilson v. Steinbach, 98 Wash.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. CR 56(c); Wilson, 98 Wash.2d at 437, 656 P.2d 1030. We construe the facts and all reasonable inferences in the light most favorable to the nonmoving party. Wilson, 98 Wash.2d at 437, 656 P.2d 1030. And where material facts are particularly within the knowledge of the moving party, courts have been reluctant to grant summary judgment. See Michigan Nat. Bank v. Olson, 44 Wash.App. 898, 905, 723 P.2d 438 (1986). In such cases, "it is advisable that the cause proceed to trial in order that the opponent may be allowed to disprove such facts by cross-examination and by the demeanor of the moving party while testifying." Olson, 44 Wash.App. at 905, 723 P.2d 438 (quoting Felsman v. Kessler, 2 Wash.App. 493, 496-97, 468 P.2d 691 (1970)).

Riley v. Andres, 107 Wn.App. 391, 395, 27 P.3d 618 (Wash.App. Div. 2 2001)

Whether the fact of the expiration of the six year statute of limitations on enforcement of an agreement, relating to the land in issue, between the Plaintiff and Defendant's predecessor in interest dated May 5, and June 3, 1977, was a material fact relating to liability?

As forms of written agreements of May 5 and June 3, 1977 establish an understanding as to the future disposition of the real property at issue in this case and as partial confirmation of the intent to remove.

. . . all contracts contain an implied covenant of good faith." Jones, at 329, 560 P.2d 348 (citing Miller v. Othello Packers, Inc., 67 Wash.2d 842, 844, 410 P.2d 33 (1966)).

Empire South, Inc. v. Repp, 51 Wn.App. 868, 882, 756 P.2d 745 (Wash.App. Div. 3 1988)

Whether the "two dismissal rule" is satisifed by the dismissal of civil cause 91-2-14190-8, in which Mr. Vukich attacked the stipulated decree, was the Plaintiff and Betty Dahlquist a named Defendant, and the denial of his motion to dismiss cause 87-2-15848-9 in which Mr. Vukich was the Defendant who brought the motion attacking the stipulated decree and Betty Dahlquist the Plaintiff who responded case dismissed, motion denied?

Whether the Defendant's signature on Stipulated Decree from Cause No. 87-2-15848-9 was obtained by duress was a material fact relating to liability.

United States Constitution, Article III, § 2 "justiciable controversy." Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 239, 57 S.Ct. 461, 463, 81 L.Ed. 617 (1937). C.R. 9(k)(1). C.R. 41(a)(4) is addressed as well as Fed. R. Civ. P. 17(a), a guardian, executor, and the like may sue in his own name without joining the party for whom the action is brought.

Mutuality of Estoppel Doctrine where this doctrine, dictates that, "A judgment will not be held conclusive in favor of one person unless it would be conclusive against him had the case been decided the other way." Foltz v. Pullman, Inc., Del. Super., 319 A.2d 38, 41 (1974). CR 9(k)(1).

Dahlquist asserted that she was mislead by her attorney in the 1987 action as to the effect that the decree

would have. She believed that the matter was to be terminated with prejudice in her favor as stated by the trial court, but under pressure from her attorney to stipulate to a result to the advantage of the Plaintiff she signed a stipulation that underlies this action. Reinstatement, second contract §§ 174, 175. As a defense to a civil action it must be pleaded affirmative. Fed. R. Civ. P. 8(c).

As in Yakama Nation, infra, Daryl Dahlquist made a timely motion to intervene.

Daryl Dahlquist was granted an interest in the chain of title to the property by the quitclaim deed signed by Defendant predecessor in interest, Cecil Martel. Defendant also acted in her capacity not only as guardian for Fred Martel putting Dahlquist in the chain of title but later as the trustee of the trust created from the estate of Cecile Martel that also put Dahlquist in the chain of title.

After Daryl Dahlquist's motion was later denied Defendant previously had made a motion to amend her complaint to add additional parties CR 19(a) 20 and 21 as well as to make Daryl Dahlquist a cross-claim Defendant, reflecting his interest in the property at issue.

> The Yakama Nation's motion to intervene was filed September 25, 1995. This was before the hearing of the petition and before any substantive ruling.
>
> The claim of right to intervene was thus raised prior to trial and judgment, and was thus timely. This makes sense. To interpret CR 24 as permitting intervention only by those with a perfected or perfectible independent cause of action is to render the rule meaningless.

Columbia Gorge Audobon Society v. Klickitat County, 98 Wn.App. 618, 624, 989 P.2d 1260 (Wash.App. Div. 3 1999)

Daryl Dahlquist also had an undivided interest for equitable relief in the chain of title with the property at issue in this action and was therefor a necessary party, who had a significant asset at risk in the action. The opportunity to benefit from the evidence on the satisfaction of the ten year statute of limitations as well as the opportunity to benefit from the six year statute of limitations etc.

Cecile Martel's trust (of which Defendant is the trustee) is clearly a party to the action as Defendant in signing quit claim deeds was acting in her capacity as trustee of the trust.

> In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages, including the claimant . . . , defendants, third-party defendants, entities released by the claimant, entities immune from liability to the claimant and entities with any other individual defense against the claimant. Judgment shall be entered against each defendant except those who have been released by the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages.

Gerrard v. Craig, 122 Wn.2d 288, 292, 857 P.2d 1033 (Wash. 1993)

The trial court should give broad scope to discovery requests that have the potential to generate or lead to relevant evidence. As in Escalante, infra, there is silence as to the trial court's reason for denying the motion to compel. They clearly were not burdensome as Plaintiff had stated that he would complete responses to them, but later refused to respond.

> Though the record is silent as to the trial court's reasons for denying the motion to compel discovery, the fact that the court imposed terms against appellants' counsel indicates that the court felt the motion was not justified. CR 37(a)(4). Thus, it may be that the court found the interrogatories were overly broad and burdensome. However, after reviewing the record, we have concluded that most of the challenged interrogatories and requests are not overly broad or burdensome, and that the motion to compel was substantially justified. CR 37(a)(4). The few overly broad requests do not justify either the imposition of terms, or the complete preclusion of discovery. See Reygo Pacific Corp. v. Johnston, Pump Co., 680 F.2d 647, 649 (9th Cir.1982).
>
> . . . Therefore, for the reasons stated above and in the discussion that follows, we hold that the trial court abused its discretion in imposing terms and in denying the motion to compel.

Escalante v. Sentry Ins., 49 Wn.App. 375, 391-392, 743 P.2d 832 (Wash.App. Div. 1 1987)

The expiration of the six year statute of limitations on enforcement of an agreement, relating to the land in issue, between the Plaintiff and Defendant's predecessor in interest dated May 5, and June 3, 1977, is a material fact

relating to liability as it relates to the relationship the parties have with the real property at issue in this case.

Daryl Dahlquist (son of Petitioner Dahlquist) has a claim to an undivided interest in the property at issue and is a necessary party to the action. Daryl did 8½ months in jail, then the order was declared Null and Void, Vacated. Equity suffers not a right without a remedy. State v. Brennan, 76 Wn. App. 347 (Wash. 1994).

Whether Betty Dahlquist's predecessor in interest, Fred Martel and/or Cecile Martel, satisfied the requirements to claim title by adverse possession, specifically satisfying the ten year statute of limitations? Possession of property in adverse manner for period of "ten years" ripens into an original title which can be divested only by such acts as are required to divest title acquired by deed. El Cerrito, Inc. v. Ryndak, 60 Wash. 2d 847, 376 P.2d 528 (1962).

Cecile Martel is named in the chain of title of the property at issue in this case by title insurance as well as by deed from her husband Fred Martel and that relationship leads to Petitioner Dahlquist's authority to issue deeds relating to Cecile Martel's property as trustee of the trust created by Cecile Martel. Cecile Martel's estate or the trust created by Cecile Martel is a necessary party to this action.

D. The Washington Supreme Court's decision to not grant review, effectively affirmed the Court of Appeals decision affirming the Superior Court's granting partial summary judgment on liability.

This Court by its ruling is impairing the obligation of the contract as is noted in the letter dated April 12, 1999,

the letters of May 5, 1977 and June 3, 1977 and July 12, 1977, Ex. I.I, 2 and 3 equal ER 803(a)(20), Alverson v. Hooper, 108 Wash. 510, 185 P. 808 (1919). For the purpose of a Motion for Summary Judgment, a "material fact" is one that affects the outcome of the litigation. Ruff v. County of King, 125 Wn.2d 697, 887 P.2d 886. All this is in harmony with freedom of contract, a basic right reserved to the people by the Constitution (Art. 1, § 10) that a state cannot violate even under sanction of direct legislative act, CR 9(k)(1), Springfield Fire & Marine Ins. Co. v. Holmes, 32 F. Supp. 964, 987 (D.C. Mont. 1940).

E. The Washington Court of Appeals and the Washington Supreme Court engaged in no constitutional analysis on the equal protection of the laws as they should be applied in enforcing RCW 4.16.020 Actions limited to ten years and RCW 4.16.040 Actions limited to six years, the statutes stating the limitations on Actions for possession of land and for written contracts.

F. No further proceedings in the lower courts are needed to clarify the question presented or to render that question suitable for resolution by this Court.

CONCLUSION

Denial of Dahlquist's response to summary judgment and her Motion To Amend her 20 day response and to Compel Discovery denied Dahlquist access to potentially relevant information. The trial court judge abused his discretion in denying Dahlquist's response to summary judgment and her Motion to Amend her 20 day response and to compel discovery.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 29, 2003

APPENDIX

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate reports but will be filed for public record pursuant to RCW 2.06.040. IT IS SO ORDERED

/s/ Mary Kay Becker

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

DIVISION I

BETTY C. DAHLQUIST,	)	NO. 48974-7-1
Petitioner,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
PATRICK G. VUKICH,	)	
	)	
Respondent.	)	FILED DEC 16 2002

PER CURIAM. Betty Dahlquist appeals from a trial court order on summary judgment finding her in contempt of a 1990 stipulated decree in which she agreed not to interfere with the property rights of her neighbor, Patrick Vukich. Because there was no issue of material fact regarding her liability, we affirm the order of summary judgment. We also affirm the denial of Dahlquist's son's motion to intervene and Dahlquist's motion to compel discovery.

This appeal arises from a history of litigation between adjacent landowners dating back to the 1970s. The record shows that at that time, Fred and Cecile Martel, Betty Dahlquist's stepfather and mother, owned a parcel of real property that shared a common boundary with a lot owned by Patrick Vukich. In 1977, Vukich and the Martels became embroiled in a boundary dispute when Vukich

discovered that a mobile home owned by the Martels straddled the common boundary.

After obtaining an interest in the Martel property, Betty Dahlquist and Aura Pell, the owner of another lot adjacent to the Vukich property, filed suit against Vukich in 1987. Dahlquist and Pell alleged that they had acquired interests in the Vukich property through acquiescence, adverse possession, or alternatively, an easement by prescription. Following a bench trial, the trial judge orally ruled that Dahlquist and Pell had failed to establish any claim to the Vukich property and quieted title in favor of Vukich. But the trial judge died before formal findings and conclusions could be completed.

In April 1990, Dahlquist, Pell and Vukich signed a stipulated decree in which they agreed that no party had acquired rights in the property of the other. The decree provided that "each party and anyone claiming through or on behalf of each party is enjoined from trespassing upon, damaging or interfering with the property of the other parties."

Dahlquist later moved to rescind the decree on the basis that her attorney had coerced her into signing it. Vukich responded by pointing out that the trial court had clearly ruled in favor of Vukich on all claims and that the parties had entered into the decree to avoid the expense of transcribing the trial. The trial court denied the motion to rescind the decree.

In April 1991, Dahlquist executed a quit claim deed that purported to transfer an interest in the Vukich property to Cecile Martel. Dahlquist signed the deed on behalf of her stepfather, Fred Martel, claiming to be his court appointed guardian, when in fact, Fred Martel had

died in 1987. The following day, Cecile Martel executed a quit claim deed purporting to transfer the Vukich property to Dahlquist's son, Daryl Dahlquist.

These events led Vukich to bring a lawsuit against Cecile Martel and Daryl Dahlquist in 1993. Dahlquist and Martel counterclaimed that they had gained interests in the Vukich property through prescription and adverse possession.

The trial court granted summary judgment in favor of Vukich in 1995. The court found that Daryl Dahlquist and Cecile Martel were bound by the stipulated decree as successors in interest to Betty Dahlquist. The court ruled that Dahlquist and Martel's counterclaims were the same claims resolved by the 1990 stipulated decree and could not be re-litigated. The trial court found that Dahlquist and Martel presented no facts supporting any new and independent claims to Vukich's property.

The trial court decreed the two quit claim deeds to be null and void. The court also ruled that neither Daryl, Martel, nor any successor to them had any right or interest in the Vukich property. The trial court also permanently enjoined Daryl and Martel from "clouding or encumbering title on, changing assessment information on, or otherwise interfering with Patrick Vukich's quiet enjoyment" of his property.

In August 1998, Betty Dahlquist executed another quit claim deed purporting to transfer Martel's interest in the Vukich property to herself. Dahlquist recorded the deed. She also caused the King County Tax Office to merge her tax lot with Vukich's tax lot. As a result, Vukich's tax lot was temporarily extinguished. When Vukich attempted

to sell his property in 1999, the deal fell through because it appeared that he no longer owned the property.

In April 2000, Vukich filed suit against Betty Dahlquist. The complaint sought to quiet title to the Vukich property, damages for slander of title, and an order finding Dahlquist in contempt of the stipulated decree.

Dahlquist's son moved to intervene in the lawsuit. The trial court denied the motion on the basis that it had been previously adjudicated that Daryl had no interest in Vukich's property. Betty Dahlquist also moved to compel answers to her interrogatories. The trial court denied the motion.

On Vukich's motion for partial summary judgment, the trial court ruled, based on the previous adjudications, that Betty Dahlquist had no interest in Vukich's property and once again quieted title in favor of Vukich. The trial court found Dahlquist in violation of the 1990 stipulated decree for interfering with Vukich's property. The court also found her in contempt of the 1995 summary judgment order to the extent that she was purporting to act on behalf of Martel when she executed the 1998 quit claim deed. Betty Dahlquist has appealed from these rulings.

Dahlquist's briefing is largely incomprehensible, and the state of the record she has provided is equally troubling. In many places, the pages of documents are out of sequence and do not appear to relate to one another. To the extent these problems created by the appellant do not

altogether preclude review, we conclude that Dahlquist's appeal is without merit.[1]

Dahlquist contends that the trial court erred when it denied her son's request to intervene as a matter of right. Intervention as of right shall be permitted only when the applicant claims "an interest relating to the property or transaction which is the subject of the action". CR 24(a). A denial of intervention as of right is reversible only if an error of law has occurred. *Westerman v. Cary,* 125 Wn.2d 277, 302, 892 P.2d 1067 (1994). An error of law is an error in applying the law to the facts as pleaded and established. *Westerman,* 125 Wn.2d at 302.

Dahlquist contends that her son had an unspecified "claim" to the Vukich property. But as the trial court found, previous adjudication already determined that Daryl had no interest or claim to the Vukich property. Nothing has changed so as to give him an interest in the property. The trial court properly denied the request for intervention as a matter of right.

Dahlquist also contends that permissive intervention was appropriate. Permissive intervention may be allowed where the applicant's claim or defense and the main action have a question of law or fact in common. CR 24(b)(2). We review a trial court's denial of permissive intervention for an abuse of discretion. *Westerman,* 125 Wn.2d at 304. Here, there were no common questions of law or fact.

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[1] In his responsive brief, Vukich requests this court to dismiss Dahlquist's appeal for an alleged failure to pay for the clerk's papers. Dahlquist has since paid the fee and the clerk's papers have been transmitted.

Daryl had no interest in the Vukich property. The trial court properly denied permissive intervention.

Dahlquist also assigns error to the trial court's denial of her motion for leave to amend to add her son as an additional party. However, Dahlquist provides no argument in her briefing. The trial court denied the motion on the same basis that it denied the motion to intervene – that Daryl Dahlquist had no interest in the Vukich property. We find no error.

Dahlquist also contends that the trial court erred when it denied her motion to compel answers to her interrogatories. Under CR 26(b), a party may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the pending action. We review a trial court's discovery ruling for an abuse of discretion. *Doe v. Puget Sound Blood Ctr.,* 117 Wn.2d 772, 778, 819 P.2d 370 (1991).

Dahlquist argues that the trial court abused its discretion by not giving reasons for denying her motion to compel. But as the trial court's order explains, the vast majority of Dahlquist's interrogatories were directed at the substance of the 1990 adverse possession lawsuit involving Dahlquist, Vukich and Pell.

These interrogatories were irrelevant because they sought information regarding previously concluded litigation. The trial court correctly denied the motion to compel.

Dahlquist contends that the trial court erred when it granted partial summary judgment in favor of Vukich on the issue of liability. An appellate court reviews a trial court's grant of summary judgment *de novo*, engaging in the same inquiry as the trial court and viewing the facts

and the reasonable inferences from those facts in the light most favorable to the nonmoving party. *Wilson v. Steinbach,* 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c). A fact is "material" if it affects the outcome of the litigation. *Ruff v. King County,* 125 Wn.2d 697, 703, 887 P.2d 886 (1995).

Dahlquist claims that summary judgment was improper because there is an issue as to whether Vukich moved a fence and a power pole. But any issue of fact that may exist with respect to the fence or power pole is not material. Under the terms of the 1990 stipulated decree, Dahlquist was permanently enjoined from interfering with Vukich's property. By executing and recording the 1998 deed and causing Vukich's tax lot to merge into her own, Dahlquist violated the decree. The trial court did not err in so concluding.

Finally, Dahlquist appears to challenge the validity of the 1990 stipulated decree by claiming that she entered into it under duress. Dahlquist provides no legal argument supporting her claim. Nothing in the record supplies a basis for reexamining an issue Dahlquist previously litigated in 1991.

The doctrine of collateral estoppel prevents "the endless relitigation of issues already actually litigated by the parties and decided by a competent tribunal. Collateral estoppel promotes judicial economy and prevents inconvenience, and even harassment, of parties." *Hadley v. Maxwell,* 144 Wn.2d 306, 311, 27 P.3d 600 (2001) (quoting *Reninger v. Dep't of Corrections,* 134 Wn.2d 437, 449, 951 P.2d 782 (1998)).

A four-part test is applied to determine whether a previous litigation should have a collateral estoppel effect. Collateral estoppel requires: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. *Reninger,* 134 Wn.2d at 449. All of these conditions are met in this case, and as a consequence, Dahlquist is barred from re-litigating her claim to an interest in the property.

All rulings at issue in this appeal are affirmed.

/s/ Becker, C.J.

WE CONCUR:

/s/ [Illegible] /s/ [Illegible]

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

PATRICK VUKICH, Plaintiff, v. BETTY DAHLQUIST, Defendant.	NO. 00-2-08221-5 KNT ORDER OF PARTIAL SUMMARY JUDGMENT/ ON THE PLEADINGS, ORDER IN LIMINE, AND ORDER FOR EXTENSION OF TIME FOR DISPOSITIVE MOTIONS

The Court has considered the motions brought by the Plaintiff, PATRICK VUKICH, including the following documents and exhibits:

Certified Statement of PATRICK VUKICH and the following Exhibits field therewith:

1. Stipulated Decree dated 4-23-90 in King County Cause No. 87-2-15343-9;
2. Order on Civil Motion in same matter (1991) denying recission of Decree;
3. Amended Order on Motion for Summary Judgment dated June 5, 1995 in King County Cause No. 93-2-28320-2;
4. Quit Claim Deed by Betty Dahlquist dated July 1, 1998 (rec # 9808100232);
5. Request for Segregation-Merger;
6. Real Property History from King County Assessor's office;
7. Complaint To Quiet Title And For Slander Of Title And Contempt Of Court; and

8. Defendants 20-Day Response.

The Court has also considered the response of Defendant, and the following documents filed by her:

Response of Defendant with exhibits

The Court finds there is no genuine issue of material fact as to the following elements of Plaintiff's claim and Plaintiff is entitled to an Order finding that:

1. Defendant Betty Dahlquist has no interest in Plaintiff's property (tax lot 262205-9071), as described below, pursuant to previous court adjudication. The court hereby quiets title in and to the following described property in Patrick Vukich:

> The South 432 feet of the West half of the East half of the West half of the Southeast Quarter of the Southwest Quarter of Section 26, Township 22 North, Range 5 East, Williamette Meridian, in King County, Washington, except for the following described tract:
>
> Beginning 888 feet South of the Northwest corner of the West half of the East half of the West half of the Southeast quarter of the Southwest quarter of said Section 26;
> Thence East 92 feet;
> Thence South to the South line of said subdivision;
> Thence West 92 feet;
> Thence North to the point of beginning; and except that portion thereof lying Southerly of the North margin of Southeast 272nd Street (Kent-Kangley Road) as established by Deeds recorded under recording number 2002257 and 2002262.

2. Defendant, BETTY DAHLQUIST, signed a Quit Claim Deed (King County Recording Number 9808100232) purporting to transfer Cecil Martel's interest in PATRICK VUKICH'S property to herself.

3. By previous court adjudication, Cecil Martel had no interest in PATRICK VUKICH'S property.

4. On 4-30-99, BETTY DAHLQUIST filed an application to merge PAT VUKICH'S property with her own adjacent property, resulting in the elimination of tax lot 262203-9071 as a separate tax lot in PAT VUKICH'S name and making it part of the adjacent tax lot owned by BETTY DAHLQUIST.

5. By signing a Quit Claim Deed to PATRICK VUKICH'S property and attempting to merge his property with her own, BETTY DAHLQUIST violated the stipulated Decree dated April 23, 1990, which enjoined her from "trespassing upon, damaging, or interfering with the property of the other parties." Furthermore, to the extent she was purporting to act on behalf of Cecile Martel, she was in violation of the Amended Order on Motion for Summary Judgment filed on June 5, 1995 which permanently enjoined Cecile Martel from "trespassing upon, dumping material, or clouding or encumbering title on, changing assessment information, or otherwise interfering with PATRICK VUKICH'S quiet enjoyment of Lot 71." Betty Dahlquist is found to be in contempt of court for violating said orders. The remedy for her contempt is reserved to trial.

6. The actions of BETTY DAHLQUIST created a cloud on PATRICK VUKICH'S title and hindered his ability to sell his property. The extent of his damages, if any, is reserved to trial.

ORDER IN LIMINE

Defendant is barred from presenting evidence regarding a claim to PATRICK VUKICH'S property by adverse possession based on activities in the 1970's and 1980's. These same issues have been previously adjudicated.

ORDER EXTENDING TIME FOR DISPOSITIVE MOTIONS

The deadline for hearing dispositive motions is extended from August 27 to August 31, when the court has time available to hear the matter, and these matters have been heard on August 31 pursuant to this extension.

Dated this 31st day of August, 2001

/s/ Dean S. Lum
Hon. Dean S. Lum, Judge

Presented By:

/s/ James F. Pleasants
James F. Pleasants #8541
Attorney for Plaintiff

/s/ Patrick Vukich
Patrick Vukich, Plaintiff

Copy Received and approved as to form:

/s/ refused to sign
Betty Dahlquist
Defendant pro se

THE SUPREME COURT
STATE OF WASHINGTON

[SEAL]

C.J. MERRITT
SUPREME COURT CLERK

RONALD R. CARPENTER
DEPUTY CLERK/CHIEF STAFF ATTORNEY

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September 30, 2003

Ms. Betty C. Dahlquist
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Attorney at Law
2100 116th Ave NE
Bellevue, WA 98004-3016

Supreme Court No. 73622-7 Patrick Vukich v. Betty Dahlquist
Court of Appeals No. 48974-7-I

Counsel:

Enclosed is a conformed copy of the Order entered on September 30, 2003, following hearing of the above matter on the Court's September 30, 2003, Motion Calendar.

Sincerely,
/s/ Desireé Chandler
DESIREÉ CHANDLER
Legal Secretary

DRC:drc
Encl.

THE SUPREME COURT OF WASHINGTON

PATRICK G. VUKICH, Petitioner, v. BETTY C. DAHLQUIST, Respondent.	)	No. 73622-7 **ORDER** C/A NO. 48974-7-I

Department I of the Court, composed of Chief Justice Alexander and Justices Johnson, Sanders, Bridge and Owens, considered this matter at its September 30, 2003, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 30th day of September, 2003.

For the Court
/s/ Gerry L. Alexander
CHIEF JUSTICE